

(c) *Notice of enrollment rights.* On or before the time an employee is offered the opportunity to enroll in a group health plan, the plan is required to provide the employee with a description of the plan's special enrollment rules under this section. For this purpose, the plan may use the following model description of the special enrollment rules under this section:

If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

(d) (1) *Special enrollment date definition.* A special enrollment date for an individual means any date in paragraph (a)(7) or (b)(8) of this section on which the individual has a right to have enrollment in a group health plan become effective under this section.

(2) *Examples.* The rules of this section are illustrated by the following examples:

*Example 1.* (i)(A) Employer Y maintains a group health plan that allows employees to enroll in the plan either—

(1) Effective on the first day of employment by an election filed within three days thereafter;

(2) Effective on any subsequent January 1 by an election made during the preceding months of November or December; or

(3) Effective as of any special enrollment date described in this section.

(B) Employee B is hired by Employer Y on March 15, 1998 and does not elect to enroll in Employer Y's plan until January 31, 1999 when B loses coverage under another plan. B elects to enroll in Employer Y's plan effective on February 1, 1999, by filing the completed request form by January 31, 1999, in accordance with the special rule set forth in paragraph (a) of this section.

(ii) In this *Example 1*, B has enrolled on a special enrollment date because the enrollment is effective at a date described in paragraph (a)(7) of this section.

*Example 2.* (i) Same facts as *Example 1*, except that B's loss of coverage under the other plan occurs on December 31, 1998 and B elects to enroll in Employer Y's plan effective on January 1, 1999 by filing the com-

pleted request form by December 31, 1998, in accordance with the special rule set forth in paragraph (a) of this section.

(ii) In this *Example 2*, B has enrolled on a special enrollment date because the enrollment is effective at a date described in paragraph (a)(7) of this section (even though this date is also a regular enrollment date under the plan).

[T.D. 8716, 62 FR 16937, Apr. 8, 1997; 62 FR 31669, 31692, June 10, 1997]

**§ 54.9802-1 Prohibiting discrimination against participants and beneficiaries based on a health factor.**

(a) *Health factors.* (1) The term *health factor* means, in relation to an individual, any of the following health status-related factors:

(i) Health status;

(ii) Medical condition (including both physical and mental illnesses);

(iii) Claims experience;

(iv) Receipt of health care;

(v) Medical history;

(vi) Genetic information;

(vii) Evidence of insurability; or

(viii) Disability.

(2) Evidence of insurability includes—

(i) Conditions arising out of acts of domestic violence; and

(ii) [Reserved]. For further guidance, see § 54.9802-1T(a)(2)(ii).

(b) *Prohibited discrimination in rules for eligibility—*(1) *In general.* (i) A group health plan may not establish any rule for eligibility (including continued eligibility) of any individual to enroll for benefits under the terms of the plan that discriminates based on any health factor that relates to that individual or a dependent of that individual. This rule is subject to the provisions of paragraph (b)(2) of this section (explaining how this rule applies to benefits), paragraph (b)(3) of this section (allowing plans to impose certain pre-existing condition exclusions), paragraph (d) of this section (containing rules for establishing groups of similarly situated individuals), paragraph (e) of this section (relating to non-confinement, actively-at-work, and other service requirements), paragraph (f) of this section (relating to bona fide wellness programs), and paragraph (g) of this section (permitting favorable treatment of individuals with adverse health factors).

(ii) [Reserved]. For further guidance, see § 54.9802-1T(b)(1)(ii).

(iii) The rules of this paragraph (b)(1) are illustrated by the following examples:

*Example 1.* (i) *Facts.* An employer sponsors a group health plan that is available to all employees who enroll within the first 30 days of their employment. However, employees who do not enroll within the first 30 days cannot enroll later unless they pass a physical examination.

(ii) *Conclusion.* In this *Example 1*, the requirement to pass a physical examination in order to enroll in the plan is a rule for eligibility that discriminates based on one or more health factors and thus violates this paragraph (b)(1).

*Example 2.* [Reserved]

(2) *Application to benefits—(i) General rule.* (A) Under this section, a group health plan is not required to provide coverage for any particular benefit to any group of similarly situated individuals.

(B) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(B).

(C) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(C).

(D) [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(i)(D).

(ii) *Cost-sharing mechanisms and wellness programs.* A group health plan with a cost-sharing mechanism (such as a deductible, copayment, or coinsurance) that requires a higher payment from an individual, based on a health factor of that individual or a dependent of that individual, than for a similarly situated individual under the plan (and thus does not apply uniformly to all similarly situated individuals) does not violate the requirements of this paragraph (b)(2) if the payment differential is based on whether an individual has complied with the requirements of a bona fide wellness program.

(iii) *Specific rule relating to source-of-injury exclusions.* [Reserved]. For further guidance, see § 54.9802-1T(b)(2)(iii).

(3) *Relationship to section 9801(a), (b), and (d).* [Reserved]. For further guidance, see § 54.9802-1T(b)(3).

(c) *Prohibited discrimination in premiums or contributions—(1) In general.* (i) A group health plan may not require an individual, as a condition of enrollment or continued enrollment under the plan, to pay a premium or contribution that is greater than the pre-

mium or contribution for a similarly situated individual (described in paragraph (d) of this section) enrolled in the plan based on any health factor that relates to the individual or a dependent of the individual.

(ii) [Reserved]. For further guidance, see § 54.9802-1T(c)(1)(ii).

(2) *Rules relating to premium rates—(i) Group rating based on health factors not restricted under this section.* Nothing in this section restricts the aggregate amount that an employer may be charged for coverage under a group health plan.

(ii) *List billing based on a health factor prohibited.* [Reserved]. For further guidance, see § 54.9802-1T(c)(2)(ii).

(3) *Exception for bona fide wellness programs.* Notwithstanding paragraphs (c)(1) and (2) of this section, a plan may establish a premium or contribution differential based on whether an individual has complied with the requirements of a bona fide wellness program.

(d) *Similarly situated individuals.* [Reserved]. For further guidance, see § 54.9802-1T(d).

(e) *Nonconfinement and actively-at-work provisions.* [Reserved]. For further guidance, see § 54.9802-1T(e).

(f) *Bona fide wellness programs.* [Reserved]

(g) *Benign discrimination permitted.* [Reserved]. For further guidance, see § 54.9802-1T(g).

(h) *No effect on other laws.* [Reserved]. For further guidance, see § 54.9802-1T(h).

(i) *Effective dates.* (1) Final rules apply May 8, 2001. This section applies May 8, 2001.

(2) *Cross-reference to temporary rules applicable for plan years beginning on or after July 1, 2001.* See § 54.9802-1T(i)(2), which makes the rules of that section applicable for plan years beginning on or after July 1, 2001.

(3) *Cross-reference to temporary transitional rules for individuals previously denied coverage based on a health factor.* See § 54.9802-1T(i)(3) for transitional rules that apply with respect to individuals previously denied coverage under a group health plan based on a health factor.

[T.D. 8931, 66 FR 1396, Jan. 8, 2001, as amended at 66 FR 14077, Mar. 9, 2001]